

RAVALLI COUNTY ATTORNEY

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Memorandum

TO: Kathleen Driscoll, Ravalli County Commissioner
John Ormiston, Ravalli County Park Board
CC: Ravalli County Commissioners
Klarryse Murphy, Financial Office
FROM: Karen S. Mahar 
DATE: May 30, 2008
RE: Amended Option Contract
Property on Kurtz Lane

Dear Cmmr. Driscoll and Mr. Ormiston:

Attached please find an Amended Option Contract for the potential purchase of property on Kurtz Lane for the Ravalli County Park Board. Per discussion with the Board of County Commissioners (BCC) this morning, it is my understanding that the Park Board is going to retrieve the \$150,000 check prematurely delivered to Ms. Stevens, and present this Amended Option Contract to Ms. Stevens for consideration and hopefully signing. **Please note for future reference that Paragraph 4 of both the original and Amended Option Contract specifically state that no money above the \$5,000 deposit will be paid until the closing date.**

The two substantive amendments to the Option Contract have been bolded for easy reference. First, I have extended the date for exercising the option to June 30, 2008, the extended date authorized by the BCC at the May 21, 2008, meeting. Although Mr. Ormiston spoke with Ms. Stevens and she wished to agree to an extension of 10 days instead of 30, the BCC would have to approve this shorter timeline. Given that we will need time to determine what effect, if any, the newly discovered zoning regulations will have on future use of the property, I have advised the BCC that the full 30 days may be necessary and have prepared the Amended Option Contract per their earlier instruction.

The only other change is an insertion into Paragraph 6 to address the zoning regulations, to make sure all parties are fully informed that the County will need to determine what effect, if any, these regulations may have on operation of the anticipated sporting facilities before moving forward with this purchase.

Please have the Amended Option Contract signed by the appropriate parties and return the original to Glenda Wiles for proper processing. Thank you for all your efforts; I am hopeful we can get this purchase finalized as originally planned once we have the details worked out.

AMENDED OPTION CONTRACT FOR SALE AND PURCHASE

The SELLER and the BUYER (named below) hereby enter into this Option Contract for Sale and Purchase of real estate.

The SELLER, in consideration of the BUYER paying Five Thousand Dollars (\$5,000) (the "Option Deposit"), gives to the BUYER the exclusive option (the "Option") to purchase the property described below (the "Property") for the amount of Four Hundred Seventy Thousand Dollars (\$470,000). In the event that the BUYER exercises this Option, the Option Deposit shall be applied towards the purchase price of the Property. The Option Deposit is non-refundable and will be forfeited in the event that BUYER fails to exercise the Option. The BUYER shall have the right to exercise this Option during a period of time beginning at 9:00 a.m. on January 09, 2008 and lasting until 5:00 p.m. on **June 30, 2008**. The BUYER shall exercise this Option by giving written notice by certified or registered mail to the SELLER or by hand delivering written notice to the SELLER with the SELLER giving the BUYER a written receipt indicating the time and date of delivery. The date that the SELLER receives this notice shall be known as the "Effective Date." It is understood and agreed that time is of essence as to the payment of the purchase price under this provision. If the BUYER does not exercise the terms of this Option by ending date as specified above, then the right and option set forth herein shall immediately terminate and the Option Deposit shall be kept by the SELLER.

Subject to the BUYER exercising this Option, the SELLER and the BUYER hereby agree that the SELLER shall sell and the BUYER shall buy the Property (together with all appurtenances) described below upon the following terms and conditions. SELLER fully agrees and acknowledges that the consideration given by the BUYER constitutes legal, adequate, and valuable consideration for the purposes of this Contract.

1. COMMENCEMENT DATE AND EFFECTIVE DATE: The "Commencement Date" shall be the date that the last of the parties to this Contract signs and executes below. The obligations of the Parties under this Option Contract begin on the Commencement Date. The "Effective Date" is the date that the SELLER receives notice from the BUYER that the BUYER is exercising its Option under this Contract.

2. DESCRIPTION OF PARTIES

SELLER: Stevens Family Revocable Trust

Patricia Stevens, Trustee

156 High Road

Hamilton, MT 59840

BUYER: Ravalli County / Park Board Commissioners

215 South 4th Street, Suite A

Hamilton, MT 59840

3. DESCRIPTION OF PROPERTY TO BEING SOLD:

LEGAL DESCRIPTION: Lots 9-11, Block 1, DALY ACRES.

4. PURCHASE PRICE

Purchase Price: Four Hundred Seventy Thousand Dollars (\$ 470,000.00)

Option Deposit: Five Thousand Dollars (\$ 5,000)

Balance to be paid at closing: Four Hundred Sixty-Five Thousand Dollars
(\$ 465,000.00)

5. REPRESENTATIONS AND WARRANTIES: To induce the BUYER to enter into this Contract, the SELLER makes the following representations, warranties, and covenants.

A. SELLER has good and marketable fee simple title to the Property, free and clear of all liens, property taxes, encumbrances, and restrictions, except for those restrictions appearing of record, taxes for the year of closing, encumbrances that will be cleared prior to closing, and encumbrances that will be cleared at the closing out of the SELLER's proceeds from the Purchase Price.

B. There are no condemnations or similar proceedings affecting any part of the Property and no such proceeding shall be pending on the Closing Date. To the best of the SELLER's knowledge, no such condemnations or other proceeds are threatened or planned.

C. There are no service contracts or agreements relating to the operation, maintenance, or security of the property under which the SELLER is bound and which will survive the closing.

D. The SELLER is not subject to any commitment, obligation, or agreement, including but not limited to, any right of first refusal or option to purchase, granted to a third party, which would or could prevent the SELLER from completing the sale of the Property as contemplated by this Contract.

E. SELLER has sole and exclusive possession of the Property and will be able to deliver possession of the Property free of all leases on the Closing Date.

6. CONDITIONS PRECEDENT: The obligations of the BUYER to close this transaction are subject to the BUYER having given Notice to Purchase and that all representations and warranties of the SELLER shall be true and correct as of the Closing Date as if such representations and warranties were being made on such date. In the event that any of said conditions are not fulfilled on or as of the Closing Date, and notwithstanding anything to the contrary in this Contract, the BUYER shall have the right to terminate this Contract and to obtain a full refund of the Option Deposit made to the SELLER whereupon all parties shall be relieved of any further obligations hereunder. **The BUYER specifically shall have the right to terminate if, after review, the zoning regulations first disclosed in the Commitment for Title Insurance issued May 20, 2008, are determined to restrict operation or maintenance of the property for the intended purposes of the Ravalli County Park Board and these regulations will survive the closing in violation of the Representation and Warranty set forth above.**

7. CLEAR TITLE:

A. SELLER shall convey a marketable title, subject only to liens, encumbrances, exceptions, or qualifications set forth in this Contract and those which shall be discharged by SELLER at or before closing.

B. If the BUYER discovers that the title is defective, the BUYER shall notify the SELLER in writing specifying the defect(s). If said defect(s) render the title unmarketable or uninsurable, the SELLER will have 120 days from receipt of notice within which to remove said defect(s), and if SELLER is unsuccessful in removing them within said time, the BUYER shall have the option of either accepting the title as it then is or terminating this Contract and thereupon the SELLER shall return the Option Deposit made to the BUYER and both parties shall be released as to one another of all further obligations under this Contract. All expenses to clear title defects shall be paid by the SELLER.

8. CLOSING:

A. This transaction shall be closed and the deed and other closing papers delivered on or before the 30th day following the expiration of the "Effective Date" unless extended by other provisions of this contract or by the mutual consent of both parties. This shall be known as the "Closing Date." Closing shall be held at a location in Ravalli County, Montana designated by the BUYER.

9. CONVEYANCE: SELLER shall convey title to the Property by warranty deed, subject only to matters contained in the following and those otherwise accepted by BUYER.

10. TAXES: SELLER shall be responsible for all taxes on the property due and payable as of the Closing Date.

11. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon BUYER or SELLER unless included in this Contract. No modifications or changes in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties to be bound thereby.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. DO NOT SIGN IF THERE ARE BLANK SPACES NOT FILLED IN. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

SELLER: STEVENS FAMILY REVOCABLE TRUST & JERRY D. STEVENS BY-PASS TRUST

By: _____ Date: _____
Patricia Stevens, Trustee

BUYER: RAVALLI COUNTY

By: _____ Date: _____
Gary Leese, Ravalli County Park Board